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**MONTANA BOARD OF HOUSING**

**MORTGAGE CREDIT CERTIFICATE (“MCC”) PROGRAM GUIDE**

**Dated as of February 1, 2003**

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# **MORTGAGE CREDIT CERTIFICATE (“MCC”) PROGRAM GUIDE**

## **INTRODUCTION**

Pursuant to the Constitution and laws of the State of Montana, particularly the Montana Code Annotated, §§ 90-6-101 through 90-6-127, and §2-15-1814 (the “Act”), and Section 25 of the Internal Revenue Code of 1986, as amended, the Montana Board of Housing (the “Board”) is authorized to issue Mortgage Credit Certificates to assist qualified individuals with the acquisition of single family residences.

The Board has developed a program within the State of Montana to provide more adequate residential housing facilities for low-income families and persons by issuing Mortgage Credit Certificates.

As a Participant in the Board’s Single Family Bond Program, each lender is automatically qualified to participate in the Mortgage Credit Certificate Program.

This Mortgage Credit Certificate (“MCC”) Program Guide (this “MCC Guide”) is intended to be used in conjunction with the Board’s Mortgage Purchase and Servicing Guide (the “Bond Guide”). Many of the terms and conditions of the Board’s Single Family Bond Program are also applicable to the Board’s Mortgage Credit Certificate (“MCC”) Program.

## **ARTICLE I**

### **DEFINITIONS**

Words not defined herein shall have the meanings assigned to them in the Bond Guide.

The following words and phrases shall have the following meanings:

“*Code*” means the Internal Revenue Code of 1986, as amended, and any rules or regulations promulgated thereunder.

“*Eligible Person or Family*” means (i) a person or family intending to principally and permanently reside as a household in a Residence, (ii) whose Annual Family Income does not exceed applicable Income requirements set forth in the Bond Guide, and (iii) who is a First-Time Homebuyer unless the Residence is located in a Targeted Area.

“*First-Time Homebuyer*” means a Mortgagor of a Residence who has not had an ownership interest in a principal residence, as more fully described in Section 2.05(b) of the Bond Guide.

“*Invitation*” means the Board’s invitation to lending institutions to participate in the MCC Program.

*“MCC Program”* means the Board’s program of issuing Mortgage Credit Certificates, pursuant to the election of the Board not to issue qualified mortgage bonds, as contemplated by this MCC Guide.

*“MCC Program Administrator”* means any employee of the Board who is designated by the Board, from time to time, to administer the MCC Program and to insure the Participant performs its obligations hereunder.

*“MCC Program Expiration Date”* means December 16, 2004, or such earlier date on which the aggregate amount of the Board’s available MCC authority under the MCC Program is committed.

*“Mortgage Credit Certificate”* or *“MCC”* means a certificate in substantially the form of Exhibit E hereto issued by the Board pursuant to the Code which entitles the holder thereof to receive certain federal income tax credits.

*“Mortgagor’s Affidavit and Certification”* means the certification in substantially the form attached hereto as Exhibit B, on which each prospective Mortgagor must certify certain facts in order to assure compliance with the Code.

*“Note”* means the written instrument executed to evidence the Mortgagor’s obligation to repay the loan.

*“Purchase Price Requirement”* means the amounts set forth in Exhibit F to the Bond Guide.

*“Seller”* means the Seller of a Residence under the Program.

*“Seller’s Affidavit and Certification”* means the certification in substantially the form attached hereto as Exhibit C, on which each prospective Seller must certify certain facts in order to assure compliance with the Code.

*“State”* means the State of Montana.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES OF THE PARTICIPANT**

**Section 2.01. Representations, Warranties and Covenants of the Participant.** The Participant reaffirms the representations, warranties and covenants made by the Participant in Article III, Sections (f), (g), (l), (r), (s), (t), (z), (aa), (cc) and (hh) of the Bond Guide (together, the “Covenants”). References to the purchase of Mortgage Loans contained in the Covenants are understood to be read as references to the issuance of Mortgage Credit Certificates when read in conjunction with this MCC Guide. In addition, references to the Mortgage Purchase Date in the Covenants are understood to be read as references to the date of issuance of a Mortgage Credit Certificate.

**Section 2.02. Survival of Representations and Warranties.** It is understood and agreed that the Participant's representations, warranties and covenants shall survive the origination of loans by the Participant under the MCC Program. Upon discovery by the Participant of the breach of any of such representations, warranties and covenants which materially and adversely affects the value of any MCC, the Participant shall give prompt written notice to the Board and take such other action as may be required hereunder.

## **ARTICLE III**

### **ISSUANCE OF MCCS**

**Section 3.01. Commitment To Issue MCCs.** The Board hereby agrees to issue MCCs in substantially the form attached hereto as Exhibit E in accordance with this MCC Guide, the Bond Guide and the terms of the applicable Invitation. The Board will cease reserving and issuing MCCs under the MCC Program on the MCC Program Expiration Date.

The Participant understands and agrees that for one year after the date on which the Board first begins to accept applications for MCCs under the MCC Program, 20% of the aggregate amount of MCCs available under the MCC Program shall be set aside by the Board and allocated for loans for Residences located in Targeted Areas. The Participant agrees to use reasonable diligence to originate loans in Targeted Areas. Such reasonable diligence shall include but is not limited to, periodic advertisements by the Participant in newspapers or other media of the availability of MCCs pursuant to the MCC Program to persons intending to purchase Residences in Targeted Areas.

**Section 3.02. Loan Terms.** An MCC will be issued only with respect to a loan made in accordance with the terms and conditions set forth in Section 2.04 (a) (i) and (ii) of the Bond Guide.

**Section 3.03. Federal Eligibility Requirements.** In addition to the set-aside for Targeted Areas in Section 3.01 above and the requirements set forth in Section 3.02 above, each Mortgage Loan for which an MCC is issued must comply with each of the federal eligibility requirements set forth in Section 2.05 of the Bond Guide (except subsections (g) and (h) thereof which do not apply to the MCC Program) (collectively, the "Federal Eligibility Requirements"). These include, among other things, a principal residence requirement, a first-time homebuyer (three-year) requirement, a purchase price limitation, an income limitation, a new mortgage requirement and a mortgage loan recapture notice.

The Participant must undertake the certification procedures described in this Section 3.03 and Section 2.05 (i) of the Bond Guide to ensure that Federal Eligibility Requirements are met. Further, the Participant must ensure that the Mortgagor has stated in the Mortgagor's Affidavit and Certification that no portion of the financing for the Residence is provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond and no portion of the financing for the Residence is provided by

a related person to the Mortgagor (within the meaning of Section 144(a)(3)(A) of the Code).

**Section 3.04. Origination Fees and Closing Costs.** In connection with each loan, the Participant may charge and collect from the Mortgagor or the Seller of a Residence an MCC fee of \$400 (\$200 of which the Participant is remitting to the Board) and only those reasonable points, origination and servicing fees and other fees and costs for providing of the financing as would be charged to a potential borrower applying for financing not provided in connection with an MCC.

### **Section 3.05. Procedure for MCC Reservation**

*MCC Pool.* All MCC authority available to the Board will be reserved in a pool and committed to Participants for the Mortgagors on a loan-by-loan, first-come, first-served basis; provided, however, if the Board, in its sole judgment, determines that the provisions of this Section need to be changed, it reserves the right at any time to modify such provisions and such change shall be effective five days after written notification of change has been mailed by the Board to the Participant.

*MCC Loan Reservation/Confirmation Report.* Upon notification by the Board, Participants may begin reserving MCC authority by submitting (1) the MCC Mortgage Loan Reservation/Confirmation Report (BOH Form 210, Rev. 2/03); (2) a copy of the executed FHA/RD/VA Loan Application or the Participant's loan application; (3) the executed buy/sell agreement; (4) verification of Gross Annual Income; (5) an executed Notice of Potential Benefits Provided by a Mortgage Credit Certificate (see Exhibit F hereto); (6) an executed Notice of Reservation Refund Fee Guideline (see Exhibit D hereto); and (7) a Recapture Notice to Mortgagor (see Exhibit G hereto); or submitting the equivalent information electronically over the Internet on "Lender On Line." DOCUMENTATION MUST BE MAILED OR FAXED, ALL RESERVATION FEES TO BE COLLECTED AT APPLICATION AND HELD BY PARTICIPANT, AND ALL CONFIRMATIONS OF RESERVATIONS WILL BE BY FAX. The order of reservations will be determined by the date and time. Each reservation shall be individually submitted. The Board intends to confirm reservations within five business days.

*MCC Reservation (Part I).* The Participant must complete and execute Part I of the MCC Mortgage Loan Reservation/Confirmation Report for each loan reservation by providing the following information:

- (a) Name and address of Participant;
- (b) Assigned 3-digit Participant Code;
- (c) Mortgage rate;
- (d) Loan Term;

- (e) Name of Mortgagor(s);
- (f) Proposed property address;
- (g) Gross Annual Income of Mortgagor(s) and verification of income;
- (h) Number of household members;
- (i) Loan type (FHA/VA/RD/PMI/Other);
- (j) Loan amount; and
- (k) Whether property is new or existing.

*MCC Confirmation (Part II).* Subject to availability of MCC authority and upon review and approval of the required documentation, the Board will reserve MCC authority for Participants for Qualified Mortgage Loans. The Board's reservation of MCC authority under an individual MCC Reservation/Confirmation Report shall begin on the date the Board approves the Participant's request for a reservation of MCC authority and shall expire 180 days thereafter. Such expiration date of the reservation will be set forth in Part II of the original MCC Reservation/Confirmation Report and will be executed and forwarded by the Board to the Participant. The Board intends to process the MCC authority reservations and mail a written confirmation to Participants within five business days of receipt. Confirmation of reservations by telephone will not be allowed. For each confirmed reservation, the Board will assign a Montana Board of Housing MCC Reservation loan number. This number shall be permanently used by the Board and the Participant to identify the MCC Reservation and the related Mortgage Loan. In the event the Mortgage Loan is not closed and the MCC issued within the applicable time period, the reservation will expire. The Board reserves the right to not refund the Reservation Fee payable at the time of submission of the complete Application (see Section 3.06 hereof). Participants need to qualify Mortgagors before submitting a reservation request to avoid loss of the Reservation Fee (see Exhibit D attached hereto for the form of Notice of Reservation Fee Refund Guidelines). Such MCC authority previously reserved will be made available for use by a different Participant/Mortgagor. In the event the Mortgage Loan is closed and the MCC documentation is delivered to the Board within the time period but it is determined ineligible for participation in the MCC Program, the Reservation Fee is forfeited. In the event the reservation expiration date shall occur on a weekend or holiday, such reservation expiration date shall be the next business day of the Montana Board of Housing.

*MCC Issuance Extension (Part III).* Upon request, the Participant may be entitled to an extension of time to deliver complete MCC documentation beyond the original date of reservation expiration. In order to secure an extension, the Participant must provide the estimated delivery date of the complete MCC documentation. Such request for extension must be in writing and must be



received by the Board on or before the date of the original reservation expiration date. Participants are advised to closely monitor their own MCC Reservation/Confirmation Reports, including the expiration dates, and to forward applicable extension documentation when due. The Board will not notify Participants of reservation expirations except at the Board's sole discretion.

*Modification of MCC Reservations.* Generally, Participants may not modify or substantially change MCC reservations once a confirmed reservation is made. Should the information provided to the Board regarding a specific reservation be incomplete or inaccurate, the Participant must cancel the reservation and forfeit the Reservation Fee. Such funds previously reserved for that particular Mortgagor will be made available for use by a different Participant and Mortgagor. Participants are at considerable risk regarding whether funds for a reservation will be available. Participants should exercise great care to be sure that information provided to the Board is complete and accurate.

Circumstances may arise in which the Board may consider and approve a modification or correction of the information provided in the MCC Reservation/Confirmation Report. To request such change or correction, the Participant may inform the Board by telephone. If approved, the Participant will be required to immediately submit written confirmation of the modification or correction to the Board. In the event the amended report is not executed by the Participant, the request for a modification or correction is void and the original reservation will be made available to a different Participant and Mortgagor.

*Cancellation of Confirmed MCC Reservations.* The Participant shall immediately notify the Board if the MCC documentation cannot be completed, so that MCC authority may be made available for use by another eligible Mortgagor. No substitutions may be made by the Participant of either Mortgagors or properties. To cancel an MCC reservation, the Participant shall notify the Board in writing. The cancellation request needs to list the Mortgagor's name, MBOH MCC Number, the MCC Reservation amount, and, if applicable, a request for a refund of the Reservation Fee. Information should be provided about the reason for the cancellation (such as a copy of the appraisal, or a copy of the loan denial). The cancellation request will be confirmed by telephone to the Participant.

*Reservation Fee.* For each loan for which an MCC application has been delivered to the Board under an individual MCC Reservation/Confirmation Report, the Participant will collect and submit to the Board a Reservation Fee, together with the required documentation.

Nothing contained in this Section shall be construed or administered by the Board to limit the use of MCCs to indebtedness for particular lenders.

**Section 3.06. Procedure for MCC Issuance.** Upon receipt of a complete Application for MCC Issuance (see Exhibit A-1), the Program Administrator will review the application and issue the MCC, if the application package and transaction are in

compliance and qualify according to the provisions of the Code, the Invitation, the Bond Guide and this Guide. An incomplete application will not be considered or processed until it is complete.

The Board will deliver the MCC to the Participant for delivery to the Mortgagor, within 30 days of the Board's receipt of the complete "Application for MCC Issuance."

The "Application for MCC Issuance" shall contain the following:

(a) Completed "Application for MCC Issuance" [(MBOH Form 200, Revised 2/03)];

(b) The Participant's check for the Reservation Fee made payable to Montana Board of Housing, in the amount specified in the Invitation.

(c) Copy of executed sales contract;

(d) Copy of completed Loan application FHCMC/FNMA 1003, the FHA/VA Loan application, or the Participant's loan application executed by the Mortgagors;

(e) Verification of Gross Annual Family Income;

(f) Copy of the signed "Mortgagor's Notice of Potential Benefits Provided by a Mortgage Credit Certificate" in the form attached hereto as Exhibit F;

(g) Copies of the Mortgagor's signed Federal Income Tax returns for the previous three years (if the Residence is in a Non-Targeted area);

(h) Copy of the Mortgagor's executed "Note";

(i) Copy of the HUD-1 or comparable closing statement;

(j) Copy of the recorded security instrument;

(k) Copy of the appraisal, if applicable;

(l) Original executed Mortgagor's Affidavit and Certification in the form attached hereto as Exhibit B;

(m) Original executed Seller's Affidavit and Certification in the form attached hereto as Exhibit C;

(n) Copy of the signed "Notice to Mortgagor of Recapture Tax and of Method to Compute Recapture Tax on Sale of Home" attached hereto as Exhibit H;

(o) Executed “Notice of Reservation Refund Fee Guideline” attached hereto as Exhibit D; and

(p) “Recapture Notice to Mortgagor” attached hereto as Exhibit G.

These provisions, requirements and the form of the Exhibits hereto are subject to revision at the discretion of the Board without prior notice to or the consent of the Participants to ensure the fair and orderly distribution of MCC authority.

Nothing contained in this Section shall be construed or administered by the Board to limit the use of MCCs to indebtedness for particular lenders.

**Section 3.07. Maintenance of Mortgage Files.** The Participant shall, at its own expense, maintain a file containing all documents prepared with respect to each loan for which an MCC is issued.

Each file shall be maintained by the Participant for the longer of (a) six years following the year in which the loan was made or (b) a minimum of three years from the date the loan is fully paid or otherwise terminated. The files shall be kept at the Participant’s regular place of business in the State and shall be available for inspection by the Board at such reasonable times and in such reasonable manner as the Board shall determine.

The Participant shall also retain all canceled checks, bank statements and other records of the Participant relating to each loan. Upon the termination of this MCC Guide, if the Board so directs, the Participant shall send all files with respect to the loans to the Board. The Participant shall provide at its expense copies of any records and files reasonably requested by the Board.

**Section 3.08. Defective Documents and Nonqualifying Loans.** If the Participant discovers that (a) any document or documents constituting a part of an Application for MCC Reservation package are false, misleading or otherwise defective in any material respect, (b) a loan is or becomes a Nonqualifying Loan (as defined below), or (c) there is a breach of any of the representations, covenants and warranties set forth herein, then the Participant shall immediately notify the Board, and the Participant shall cure the defect or breach within a period of 60 days from the time the Participant discovers such defect or breach or such determination is made known to the Participant (the “Cure Period”).

The Participant covenants and agrees that, if any loans described above cannot be cured within the Cure Period, the Participant will immediately notify the Board, the Program Administrator and the Mortgagor, and the MCC shall be canceled.

As used herein, the term “Nonqualifying Loan” shall mean and include any loan with respect to which an MCC was issued hereunder and which does not meet one or more of the Federal Eligibility Requirements set forth in the Bond Guide or which loan has been paid or otherwise satisfied.

**Section 3.09. Representations, Warranties and Covenants of Participant Concerning Loans.** The Participant hereby represents and warrants to and covenants with the Board and Program Administrator that:

(a) The information set forth in each document submitted will be true and correct at the closing date thereof and each loan with respect to which an MCC is issued will satisfy all applicable requirements set forth herein.

(b) Each loan, at the time it is made, shall have conformed to all disclosures required to be made by the Real Estate Settlement Procedures Act and the Consumer Credit Protection Act and all other applicable State and federal laws and regulations.

(c) Each loan at the time it is made shall have complied with the applicable State and federal usury laws.

(d) If an allocation has been reserved pursuant to Section 3.05 hereof, submission of the final MCC application shall represent a confirmation by the Participant that at the time of closing there has been no change in circumstances to cause the Mortgagor or the transaction to no longer be in compliance with the requirements of the Code and the Invitation.

(e) The Participant shall use its best efforts to secure MCCs on behalf of eligible Mortgagors.

**Section 3.10. Prohibition of Discrimination.** The Participant must consider all applications in the order in which they are received, or in any other manner designated or approved by the Board, on a fair and equal basis, may not arbitrarily reject a loan application because of the location, and/or age of the property, and may not, in the case of a proposed Mortgagor, arbitrarily vary the terms of a loan or the application procedures therefore or reject a loan applicant because of the race, color, religion, national origin, age, sex or marital status of such applicant or in violation of any State or local law. No Participant shall enter into any agreement or arrangement with any person, firm or corporation to prefer any applicant or group of applicants for such loans without the express approval of the Board.

The Participant shall not directly or indirectly attempt to prohibit a Mortgagor from seeking financing from any particular lender, nor attempt to require a Mortgagor to seek financing from a specific lender.

**Section 3.11. Necessary Action by Board and the MCC Program Administrator.** In the event that any action required by the Board or MCC Program Administrator for or in connection with any loan shall not be timely done or performed by the Participant, and the continuance of any such nonaction, in the opinion of the Board or the MCC Program Administrator may become inimical to the best interests of the Board hereunder, the Board and/or the MCC Program Administrator shall promptly undertake such action as they deem proper or necessary in the circumstance in substitution for, and at the reasonable expense of, the Participant, and the Participant shall

be liable for and shall promptly pay to the Board and/or the MCC Program Administrator all of their expenses and costs (including that of their counsel) as to such action taken by them in such circumstances, and the Board and the MCC Program Administrator shall not be liable to the Participant on account of any such action taken by them in good faith and after written notice to the Participant to undertake such required action.

**Section 3.12. Remedies.** Upon failure by the Participant to comply with the conditions and terms hereof, the other Board may terminate its participation in the MCC Program. In addition, the Participant may become ineligible for subsequent participation in any housing program of the Board.

## **ARTICLE IV**

### **PARTICIPANT**

**Section 4.01. Liability of Participant.** The Participant shall be liable hereunder to the extent that the obligations are explicitly imposed upon the Participant.

**Section 4.02. Merger or Consolidation of Participant.** Any entity into which the Participant may be merged or consolidated, or any entity resulting from any merger, conversion or consolidation to which the Participant shall be a party, or any entity succeeding to the business of the Participant, shall be the successor of the Participant hereunder without the execution or filing of any document or instrument, except as provided herein.

**Section 4.03. Participant Not To Resign.** The Participant shall not resign from the obligations and duties hereby imposed on it except upon determination that its duties hereunder are no longer permissible under applicable law or regulation. Any such determination permitting the resignation of the Participant shall be evidenced by an opinion of counsel satisfactory to the Board to such effect delivered to the Board. No such resignation shall be effective until the Board, the MCC Program Administrator, or a successor of the Participant shall have assumed the Participant's responsibilities and obligations under this MCC Guide. Any Participant seeking a determination permitting resignation under this Section 4.03 shall submit to the Board in writing a specific plan of how its responsibilities and obligations under this MCC Guide will be carried out after the proposed resignation. The Participant shall bear any costs or indemnify the Board for any costs which are incurred by the Board in having the Participant's responsibilities and obligations under such sections carried out during or as a result of the resignation process.

**Section 4.04. Reports.** The Participant shall file an annual report with the Internal Revenue Service on IRS Form 8329 (or such other form as may be designated by law or regulation) during the period that MCCs are being issued by the Board and submit a copy thereof to the Board. Copies thereof shall be delivered to the Board's office within ten (10) days of the date the report was due to the IRS.

For six years following the year in which a loan for which the Board issued an MCC was made, the Participant shall retain on its books, records and have available a summary of loans which includes the following information:

- (a) The name, address, and Social Security number of each MCC holder.
- (b) The name, address, and Federal taxpayer identification number of the Board.
- (c) The date the loan was closed, the date the MCC was issued, the certified indebtedness amount, the credit rate under the MCC, and the amount of MCC issued.

The Board shall make quarterly reports to the Internal Revenue Service on IRS Form 8330 (or such other form as may be designated by law or regulation) and any additional reports as required by law.

The Participant hereby acknowledges that the penalty provisions of Section 6709(c) of the Code which apply to the failure of the Participant to file IRS Form 8329 shall survive the termination of this MCC Guide or any resignation of the Participant by reason of Section 4.03 of this MCC Guide.

## **ARTICLE V**

### **MISCELLANEOUS PROVISIONS**

**Section 5.01. Participant as Independent Contractor.** In the performance of its duties as the Participant hereunder, the Participant shall be an independent contractor acting in its own behalf and for its own account and without authority, express or implied, to act for or on behalf of the Board, in any capacity other than that of an independent contractor, save as herein expressly set forth or as may from time to time be authorized by the Board in writing.

**Section 5.02. Changes in Organization.** The Participant shall immediately notify the Board and MCC Program Administrator of any contemplated, material change in its organization, including but not limited to, mergers or consolidations, changes of name or corporate charter. The Participant shall immediately notify the Board and MCC Program Administrator of any voluntary or involuntary proceedings which might result in bankruptcy, reorganization, dissolution, liquidation, the appointment of a trustee or receiver, an assignment for the benefit of creditors or the Participant having its activities restricted in any manner related to its performance of material obligations hereunder by any governmental agency.

**Section 5.03. Indemnity.** The Participant will indemnify and hold harmless the Board, and its members, officers, employees and agents from and against any and all claims, causes of action, loss, damages, costs and expenses (including attorney's fees), judgments (or appeals thereof), fines, penalties, and liability of any nature whatsoever

that may be related to or arise out of any failure on the part of the Participant to perform its services, duties and obligations under the terms and provisions of this MCC Guide, notwithstanding knowledge, act, or failure to act by the Board, other than an act or failure to act which prevents the Participant from performing such services, duties and obligations.

**Section 5.04. Sale of Loan.** The Participant shall remain obligated upon the sale of a loan or its servicing to report noncompliance that it discovers in accordance with this MCC Guide and to report program data to the Internal Revenue Service and the Board in compliance with this MCC Guide.

**Section 5.05. Amendments.** The Board may amend this MCC Guide without prior notice to or the consent of the Participant as necessary to comply with the Code provisions governing MCCs and the MCC Program.

**Section 5.06. Other Provisions.** The provisions contained in Section 5.05(a), (d), (e), (g) and (h) of the Bond Guide are incorporated herein by reference.

**Section 5.07. Notices.** The Participant and the Board will provide any required notices in accordance with Section 5.04 of the Bond Guide.